

(2005) 02 JH CK 0001**Jharkhand High Court****Case No:** S.A. No. 50 of 1989

Jyotilal Singh

APPELLANT

Vs

Srikant Singh and Another

RESPONDENT

Date of Decision: Feb. 25, 2005**Acts Referred:**

- Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 - Section 4(7), 5, 6, 63

Citation: (2005) 3 JCR 316**Hon'ble Judges:** Narendra Nath Tiwari, J**Bench:** Single Bench**Advocate:** Sunil Kumar Mahto, for the Appellant; Manju Prasad Swami Nath Prasad Roy and Manoj Kumar, for the Respondent**Final Decision:** Dismissed

Judgement

@JUDGMENTTAG-ORDER

N.N. Tiwari, J.

At the time of admission of this appeal, two substantial questions were framed :--

"(i). Whether the S.D.O. had the right to entertain and dispose of the suit without indicating that power was delegated to him?

(ii). Whether the Court was justified in going into the merit of the claim of the party?"

2. This appeal arose out of the suit filed by the plaintiff-appellant who was the objector before the Sub-Divisional Officer and the order had gone against him appointing the defendant as Pradhan in a proceeding for appointment of Pradhan of village Dhobona. He claimed to be the Jamabandi Raiyat of Mouza Dhobona @ Kalajhoria within the P.S. Nala. The appellant subsequently filed a suit being T.S. 41/43 of 1976/1983 for declaration that the appointment of the defendant as Pradhan was not in accordance with law and is void. The admitted case of the parties was that after the death of the father of the defendant, the defendant as well

as the plaintiff claimed themselves as Pradhan of the village and they filed their respective petitions before the Sub-Divisional Officer praying for appointment as Pradhan of the village. Consequently two cases were registered before the Sub-Divisional Officer, Jamtara and the same were disposed of by order dated 22.3.1976 and the defendant was appointed as Pradhan of Mouza Dhabona @ Kalajhoria.

3. The plaintiffs suit was contested by the defendant by filing written statement. The defendant, inter alia, took the ground that the suit was barred u/s 63 of the Santhal Parganas Tenancy Act and his appointment is in accordance with law and has been made after ascertaining the general acceptability by Jamabandi Raiyats. It was further claimed that the defendant's father was the last Pradhan and there was the general acceptability of the Jamabandi Raiyats in favour of the defendant for succeeding his father who was the last Pradhan. All the procedures of law were duly observed in his appointment and as such the same is valid and legal and the same cannot be challenged in view of the provision of Section 63 of the Santhal Parganas Tenancy Act.

4. In the said title suit parties led evidences and several issues were framed. After thorough discussion and consideration of the evidences and materials on record and provisions of law learned trial Court dismissed the suit by judgment and decree dated 1.4.1986.

5. The plaintiff then filed appeal against the said judgment and decree of the trial Court being Title Appeal No. 66/1986 in the Court of the District Judge, Dumka. The said appeal was finally heard and decided by the VII Additional District Judge, Dumka. The learned lower Appellate Court thoroughly considered the grounds of appeal, appraised the evidences and material on record and also taken into consideration, the provisions of law and found no merit in the appeal. The findings of the trial Court were thus found sound and correct and the appeal was dismissed.

6. Mr. Sunil Kumar Mahto, learned counsel appearing on behalf of the appellant, submitted that in accordance with law, particularly under Sections 5 and 6 of the Santhal Parganas Tenancy Act, the Deputy Commissioner alone has got power to appoint a village head man and the Sub-Divisional Officer had no power to entertain the said application filed on behalf of the respective parties and to decide the same. According to the learned counsel, the order passed by the learned S.D.O. was wholly without jurisdiction and the judgment and decree of the learned Courts below being based on the same is also non est in law. According to the learned counsel, therefore, the first substantial question as to whether the S.D.O. had the right to entertain the said cases and to decide the same must be answered in negative. Learned counsel further submitted that while deciding the matter of appointment, the S.D.O. had entered into the merits of the case and decided the respective claims of the parties which is beyond his jurisdiction and as such according to him the second substantial question as to whether the S.D.O. was justified in going into the

merit of the claims of the parties also must be answered in negative.

7. Mr. Manjul Prasad, learned senior counsel appearing on behalf of the respondents, on the other hand, submitted that Section 4(7) of the Santhal Parganas Tenancy Act, defines the Deputy Commissioner which means the Deputy Commissioner of Dumka, Sahibganj, Godda and Deoghar and also the Additional Deputy Commissioner, Sub-Divisional Officer and Deputy Collectors empowered by the State Government to discharge any of the functions of the Deputy Commissioner under this Act. According to the learned counsel the law does not provide exclusive jurisdiction only to the Deputy Commissioner but the other officers including the S.D.O. have also been empowered by the State Government to discharge the functions of the Deputy Commissioner. Learned counsel further submitted that the appellant submitted himself before the jurisdiction of the S.D.O. by filing his own claim and fighting and contesting the claim application filed by the defendant for appointment of Pradhan. According to the learned counsel after having hotly contested and lost the case before the S.D.O., the appellant cannot take that objection at the second appellate stage of want of jurisdiction of the S.D.O. According to the learned counsel, even at the first appellate stage the said point was not raised and as such no such question at all arises to be decided in this second appeal. Regarding the second substantial question, Mr. Manjul Pd. urged that when the claims were made for appointment of Pradhan, the S.D.O. had every jurisdiction to decide those claims and without going into the merit of the claims contested by the parties, it was not possible for the S.D.O. to decide the said controversy. If claim and counter-claim are made by different persons for appointment of Pradhan of the village, the S.D.O. has no option but to decide the contesting claims on merits. Learned counsel submitted that the second substantial question also does not at all arise. It has been contended that both the questions are tangled issues of facts and the same cannot be decided at the second appellate stage as the same are to be established by evidences.

8. After hearing the parties and perusing the records, I find much substance in the submissions of Mr. Manjul Prasad, learned counsel appearing for the respondents. In this case the appellant himself had filed an application putting his claim for appointment as Pradhan before the S.D.O., Jamtara and had also contested the counter petition filed by the defendant and after hot contest by the parties, the S.D.O. passed order appointing the defendant as Pradhan of the village. The appellant never raised any objection of want of jurisdiction or absence of delegation of power on the S.D.O. when the proceeding was initiated, heard and disposed of by the S.D.O. The said point was also not taken into suit and appeal before the lower Appellate Court. In my considered view, at this stage the appellant who had taken chance and himself filed the case and contested the case filed by the defendant, can not be allowed to take this plea at this stage after having lost the same on contest and having not taken the ground earlier. Whether there was any delegation of power on the S.D.O. or not is required to be pleaded and proved. In my view,

therefore, the question No. 1 is not a substantial question at all. So far as the question No. 2 is concerned, the counsel for the respondents has rightly submitted that the S.D.O. was bound to decide the claim and counter claim on the merit of the respective claims of the parties for coming to the finding as to who is entitled to be appointed as Pradhan and it was within the jurisdiction of the S.D.O. to enter into such question and decide the same. In my considered view, there was no legal bar for entering into the merit of the claim and counter claim put forth by the parties for the purpose of deciding the controversy as to who was entitled to be appointed Pradhan of the village. I, therefore, find that the questions framed at the time of admission are not the substantial questions of law and warrant no indulgence of this Court for exercising its second appellate jurisdiction.

9. There is thus no merit in this appeal which is accordingly, dismissed. However, there shall be no order as to costs.